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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : 15-CR-00637 (KAM)

-against- : United States Courthouse
: Brooklyn, New York

MARTIN SHKRELI, : Friday, July 21, 2017
: 9:00 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE AND A JURY

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1 THE COURT: Are there other issues we need to
2 address.

3 MS. SMITH: Your Honor, we do have a number of
4 issues we want to raise, I think maybe it makes sense to put
5 the witness on, finish with the jury and discuss them.

6 THE COURT: Good point.

7 Are they all here?

8 COURTROOM DEPUTY: We were waiting on one.

9 (Pause.)

10 (Jurors entering.)

11 THE COURT: All our jurors are present. Please have
12 a seat everybody.

13 Thank you. Is the Government ready to proceed?

14 MR. SRINIVASAN: Yes, Your Honor, we call Amy
15 Merrill to the stand.

16 AMY MERRILL, having been first duly sworn, took the stand and
17 testified as follows:

18 THE COURT: Thank you. Good morning.

19 You may proceed.

20 MR. SRINIVASAN: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. SRINIVASAN:

22 Q Morning Ms. Merrill.

23 A Good morning.

24 Q Where do you live?

25 A Salt Lake City, Utah.

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1 Q How long have you lived there?

2 A My whole life.

3 MR. BRAFMAN: It is very hard to hear the witness.

4 THE COURT: I will adjust your microphone a little
5 bit.

6 THE WITNESS: Thank you.

7 Q Can you please briefly describe your educational
8 background?

9 A After high school, I went to college.

10 Q What did you study?

11 A Design.

12 Q Did you get a degree or certificate in design?

13 A Yes.

14 Q What did you do after that?

15 A I went to work for a payroll company who owned a transfer
16 agency, and then I started working for the transfer agency.

17 Q Where do you work now?

18 A Standard Registrar and Transfer.

19 Q What is Standard Registrar?

20 A We are a stock transfer company.

21 Q You mentioned "transfer agency" a minute ago, is that the
22 same as a stock transfer company?

23 A Yes, it is.

24 Q What is your position at Standard Registrar?

25 A I am the manager.

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1 Q Do you have a supervisory role there?

2 A Yes, I do.

3 Q How many people do you supervise?

4 A Two.

5 Q What is your role at the company?

6 A I take care of all the records and the clients and manage
7 the transfers with the stock transfer agents.

8 Q What is a transfer agent or a stock transfer agent?

9 A We issue a transfer stock for companies and hold their
10 shareholder records.

11 Q What kinds of companies are the clients of Standard
12 Registrar?

13 A We typically deal with smaller companies.

14 Q You mentioned a second ago, the company issues and
15 transfers shares; is that right?

16 A That's right.

17 Q Can you please walk the jury through the process for
18 issuing shares?

19 A For an issuance, we get documents from the company
20 requesting the issuance of shares with backup documents. Once
21 we have everything that is required, we issue the stock.

22 Q Let's break that down a little bit.

23 Who can make a request for the issuance of shares?

24 A A director of the company, counsel for the company.

25 Q Can an officer of the company?

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1 A Yes.

2 Q A CEO for example?

3 A Yes.

4 Q What kinds of documents?

5 A Agreements, legal opinions, letters of instruction and
6 others.

7 Q What are letters of instruction?

8 A It can be an E-mail or a written letter instructing us to
9 issue shares.

10 Q I take it that comes from one of the people you mentioned
11 earlier?

12 A Yes.

13 Q What is the role that you were mentioning of a legal
14 opinion or an agreement?

15 A A legal opinion is a directive to issue shares, free
16 trading typically.

17 Q Are those documents that Standard typically collects
18 before issuing shares?

19 A Yes.

20 THE COURT: May I ask what she meant.

21 MR. SRINIVASAN: Yes.

22 THE COURT: What do you mean, it is a legal opinion
23 to issue shares pre-trading.

24 THE WITNESS: Free trading.

25 THE COURT: Free trading, I'm sorry. Thank you.

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1 Q On that point, do the documents that you receive specify
2 whether shares are restricted or free trading?

3 A Yes.

4 Q Now, there is also, I think you mentioned a transfer of
5 shares. Does that run along similar lines?

6 A A transfer of shares, we would get a stock certificate
7 with a stock power endorsed with a medallion guarantee and
8 instructions to transfer the shares to new individuals.

9 Q So who would turn in the stock certificate?

10 A It could be the company or a shareholder or a broker.

11 Q What is a stock power and medallion guarantee?

12 A A stock power is an assignment to a new shareholder
13 endorsed by the current shareholder and the medallion
14 guarantees the signature.

15 Q Is the medallion a special kind of document?

16 A A medallion is a stamp that would be on the stock power.

17 Q Now, does Standard Registrar maintain all the documents
18 that we have been talking about in the company's files?

19 A Yes.

20 Q Who maintains the files?

21 A I do.

22 Q How are those files organized?

23 A By company and by transaction.

24 Q How soon after a stock request comes in are Standard's
25 files created?

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1 A As soon as we have everything required that is maintained
2 immediately.

3 Q When you say, it is maintained immediately, Standard's
4 files?

5 A Created, yes.

6 Q How quickly does Standard Registrar process an issuance
7 or transfer of stock?

8 A Within 72 hours.

9 Q What are the ways that stock certificates are issued?

10 A There is physical and electronic.

11 Q And, what are the shares that are issued electronically
12 called?

13 A Book entry.

14 Q How about the physical version?

15 A Certificates.

16 Q Is that a piece of paper, a stock certificate?

17 A Yes, it is.

18 Q Does Standard issue stock in both formats?

19 A Yes.

20 Q Now, does Standard Registrar do stock transfers after two
21 entities merge together?

22 A Yes.

23 Q In your experience, does it take time for the name of the
24 company to change after a merger?

25 A Yes.

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1 Q Again, in your experience, does Standard Registrar do
2 stock transactions before that name change happens?

3 A Yes.

4 Q Ms. Merrill, do you know an individual named Martin
5 Shkreli?

6 A Yes.

7 Q How do you know him?

8 A Through Retrophin, he was an officer of the company.

9 Q How did you communicate with Mr. Shkreli in the past?

10 A By telephone and E-mail.

11 Q Are you familiar with the name Desert Gateway?

12 A Yes.

13 Q How are you familiar with it?

14 A That was one of the companies he represented.

15 Q What if anything was the relationship between Desert
16 Gateway and Retrophin?

17 A There was a merger of the companies.

18 Q Did Standard Registrar do stock transactions for Desert
19 Gateway?

20 A Yes.

21 Q Did it continue to do stock transactions for Retrophin
22 after the merger?

23 A Yes.

24 Q Ms. Merrill, before you testified today, did you collect
25 any documents from Standard Registrar's files?

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1 A Yes.

2 Q Now there is a large binder in front of you. The binder
3 contains documents that are marked for identification as
4 Government Exhibits 125-1 through 125-30; 123-31 and 125-32,
5 through 125-46.

6 Ms. Merrill, have you reviewed the documents in the
7 binder before appearing today?

8 A Yes.

9 Q What are these documents?

10 A They are transfer documents.

11 Q When you say, transfer documents, what do you mean?

12 A It would be any transfer-- well, not any transfer,
13 transfers in and the backup documentation and issuance
14 documents.

15 Q For stock?

16 A Yes.

17 Q Do these relate to Desert Gateway and Retrophin?

18 A Yes.

19 Q Were these records made at or near the time of the
20 relevant stock transfer activity?

21 A Yes.

22 Q Were these records kept in the ordinary course of
23 Standard Registrar's business?

24 A Yes.

25 MR. SRINIVASAN: Your Honor, we move Government

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1 Exhibits 125-1 through 125-30; 123-31 and 125-32 through
2 125-46 into evidence.

3 THE COURT: 46 did you say?

4 MR. SRINIVASAN: 46, yes, Judge.

5 We are seeking to admit 125-22, 125-30, 125-32,
6 125-40, 125-43, 125-44, 125-45, and 125-46, subject to
7 connection.

8 THE COURT: Any objection from the defense?

9 MS. ZELLAN: Based on the Court's rulings yesterday
10 and subject to connection on the ones mentioned by Mr.
11 Srinivasan, no.

12 THE COURT: Thank you. We will admit Government
13 Exhibit 125-1 through 125-30; 123-31, and 125-32 through
14 125-46, and subject to connection 125-22, 125-30, 125-32,
15 125-40, 125-43, 125-44, 125-45 and 125-46 subject to
16 connection.

17 (So marked.)

18 MR. SRINIVASAN: Thank you, Your Honor.

19 BY MR. SRINIVASAN:

20 Q Ms. Merrill, let's discuss a few of the documents.

21 I am showing you what is in evidence as Government
22 Exhibit 125-1, that is tab one in your binder.

23 A Okay.

24 Q What is this document?

25 A This is an activity report for Retrophin.

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1 Q What is an activity report?

2 A It is a transaction log for issuance and transfers of the
3 company.

4 Q Of stock?

5 A Yes.

6 Q Ms. Merrill, if we can zoom in on the first three lines
7 of the document at the very top of the page.

8 Is the name of the company indicated here?

9 A Yes.

10 Q Retrophin?

11 A Yes.

12 Q What time period does this document cover?

13 A December 1, 2012, through November 12, 2014.

14 Q Ms. Merrill, for what purpose was this document created?

15 A It was for the company so they could see their
16 transaction history.

17 Q Was this generated by Standard Registrar for Retrophin?

18 A Yes.

19 Q If we can focus on the table on the bottom half of the
20 page, please.

21 Ms. Merrill, let's start with the very first line in
22 the table. What does the number 79738 represent?

23 A That is a transmittal number.

24 Q What is a transmittal number?

25 A It is a transaction number.

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1 Q And, does each transaction get a unique number?

2 A Yes, it does.

3 Q Now, there are a number of entries that I see here. Did
4 all of these transactions happen under this one transmittal?

5 A Yes.

6 Q Is this exhibit a summary of all the stock transfers that
7 Standard Registrar processed during this time period?

8 A Yes.

9 Q Earlier you mentioned that Standard Registrar gets backup
10 documentation. Are there underlining files and backup
11 documentation for the entries in this summary document?

12 A Yes.

13 Q So, let's take a look at the supporting documents for
14 transmittal number 79738. Can you go to tab two of the
15 binder, Government Exhibit 125-2.

16 Ms. Merrill let's walk through the first page of
17 this exhibit. Looking at the page as a whole, what is this
18 document?

19 A This is a transmittal.

20 Q What is a transmittal?

21 A It is a transaction that has been completed.

22 Q Does this summarize the activity that took place in this
23 transaction?

24 A Yes.

25 Q So let's start with the top right corner of the document.

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1 If you can zoom in on that, please.

2 So if you look at the top right corner there, again
3 what is the 79738?

4 A That is the transaction number.

5 Q Is that the same number we saw a minute ago?

6 A Yes.

7 Q What is the date on this transaction?

8 A December 13th, 2012.

9 Q And, on the left-hand side, there is a phrase
10 "transmittal for", what does that mean?

11 A That is who presented the request.

12 Q When you say, presented the request, is it presented to
13 Standard Registrar?

14 A Yes.

15 Q And who is that for this document?

16 A Desert Gateway.

17 Q Now, if we look at the table. There are a number of
18 column headings here. Can you please walk the jury through
19 what the column headings, a certificate, name and number of
20 shares mean?

21 A Yes. The "certificate" is the certificate number that is
22 issued. The "name" is who the shares are issued to. And the
23 "number of shares" is the number of shares issued to the
24 individual.

25 Q Does each stock certificate have a unique number?

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1 A Yes.

2 Q What is the parenthesis "R" mean?

3 A Restricted stock.

4 Q I see that there is a book entry here. What is book
5 entry again?

6 A Electronic shares.

7 Q Now, if we look at the very first entry there. The
8 certificate number is 1555(R). And the book entry is for
9 Martin Shkreli. Do you see that?

10 A Yes.

11 Q What are the number of shares in this book entry?

12 A 2,577,755.

13 Q Is that the electronic record of the shares for that
14 individual?

15 A Yes.

16 Q Now, if we go to the third page of this exhibit, which is
17 Bates number Standard 00424. At the top there, it is an
18 E-mail from Evan Greebel dated December 13th, 2012, to Amy at
19 Standard Registrar. Who is Amy at Standard?

20 A That is me.

21 Q Do you know who Evan Greebel was?

22 A Yes, he was counsel for Retrophin.

23 Q Now, the E-mail says, Amy, as you maybe aware, Desert
24 Gateway DGTE, and Retrophin executed the attached merger
25 agreement and filed the attached certificate of merger

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1 yesterday. In connection with that merger, restricted stock
2 should be issued to the people set forth on the attached
3 spreadsheet in the amounts set forth thereon. Do you prefer
4 to issue the stock in book entry or certificated form?

5 Please confirm that stock in DGTE will be issued and
6 advise the timing for issuance.

7 If you have any questions or comments, please call
8 me, best regards, Evan.

9 There is one other term here that is new. It says
10 "certificated". What does certificated mean?

11 A That would be putting the shares in a certificate format
12 rather than electronic.

13 Q What is related in this E-mail?

14 A It is a request to issue stock.

15 Q Is this one of the instruction letters you were
16 mentioning earlier?

17 A Yes.

18 Q There are attachments to this E-mail, are the documents
19 part of the backup for this file?

20 A Yes.

21 Q Did Standard Registrar keep the attachments in its files?

22 A Yes.

23 Q So let's put a few of these attachments. If we can go to
24 the next page, Bates number Standard 000425.

25 What is this?

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1 A That is the breakdown for the issuance who we should be
2 issuing to and the number of shares to be issued.

3 Q Do these numbers appear on the first page of the document
4 that we saw a few minutes ago?

5 A Yes.

6 Q And was this an attachment to the E-mail from Evan
7 Greebel?

8 A Yes.

9 Q So let's go to the next page, Standard 000426.

10 Let's start with the E-mail in the middle, which you
11 wrote to Evan Greebel on December 13th, 2012.

12 You wrote, I'll review the documents and let you
13 know if we need additional information. We must issue the
14 stock as directed, so please specify if you would like the
15 stock certificated or held in book entry form. We can't hold
16 certificates here longer than 72 hours. Please advise.

17 If we go up one E-mail. Evan Greebel wrote back to
18 you on the same day. Please do book entry.

19 Was this part of the instructions that you received
20 for this request?

21 A Yes.

22 Q So let's go to page 7 of this exhibit, Bates number
23 Standard 000428.

24 Ms. Merrill, what is this document?

25 A It is a merger agreement.

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1 Q Focusing on the very first paragraph there, which
2 entities merged?

3 A Desert Gateway and Retrophin.

4 Q What is the importance of this document to Standard
5 Registrar work?

6 A This is backup document for the issuance.

7 Q Is this a type of document that you would typically
8 receive in a merger situation?

9 A Yes.

10 Q So did Standard Registrar also process additional shares
11 of Desert Gateway in this timeframe?

12 A Yes.

13 Q So, let's go to Government Exhibit 125-7, which is tab 7
14 in your binder.

15 Who sent this E-mail?

16 A Martin Shkreli.

17 Q Who did he send it to?

18 A To me.

19 Q Who is Rachel at Standard Registrar?

20 A She was a transfer agent.

21 Q Did she work for you at Standard Registrar?

22 A Yes, she did.

23 Q He sent this E-mail on December 20th, 2012. Martin
24 Shkreli wrote, to whom it may concern.

25 My name is Martin Shkreli. I am the new CEO of

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1 Desert Gateway, Inc., DGTE. I am requesting the mailing by
2 Federal Express of the stock certificates owned by myself,
3 individually, as well as by two entities I control. MSMB
4 Healthcare LP and MSMB Capital Management, LP.

5 Your records should indicate that I own 2,531,920
6 shares individually and 375,000 shares of DGTE through MSMB
7 Capital Management, LP, 473,274 shares through MSMB
8 Healthcare, LP, 413 shares through MSMB Healthcare Investors,
9 LLC.

10 The correct address is 777 Third Avenue, 22nd floor,
11 New York, New York, please send to my attention, Martin
12 Shkreli care of MSMB Capital. Thank you, Martin Shkreli.

13 Generally what was the significance of this document
14 to Standard Registrar?

15 A This is an instruction letter.

16 Q Was Martin Shkreli an authorized person?

17 A Yes.

18 Q Let's go now to Government Exhibit 125-14, to keep going
19 with this transaction.

20 Ms. Merrill, what is the transmittal number for the
21 this file?

22 A I'm sorry, what tab is this?

23 Q I'm sorry, I apologize, tab 14.

24 A Thank you.

25 Can you ask the question again.

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- 1 Q What is the transmittal number for this file?
- 2 A 80187.
- 3 Q What is the date on this transaction?
- 4 A January 28th, 2013.
- 5 Q Who requested the stock transaction?
- 6 A Desert Gateway.
- 7 Q In turning to the table that is in the middle here, what
- 8 happened in this transaction?
- 9 A There was a share breakdown.
- 10 Q Whose shares were broken down?
- 11 A MSMB Capital Management.
- 12 Q How many shares?
- 13 A 375,000.
- 14 Q Were those shares restricted or free trading?
- 15 A Restricted.
- 16 Q And, into how many entries was it broken up?
- 17 A Five certificates.
- 18 Q Five new certificates?
- 19 A Yes.
- 20 Q And, in whose name were those certificates?
- 21 A MSMB Capital Management.
- 22 Q And the total number of shares at the end?
- 23 A 375,000.
- 24 Q Were these restricted or unrestricted?
- 25 A Restricted.

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1 Q So, let's go to the second page of this exhibit, which is
2 Bates number Standard 000563. Who sent this E-mail?

3 A Martin Shkreli.

4 Q It is dated January 28th, 2013, and was it sent to you?

5 A Yes.

6 Q So Mr. Shkreli wrote, for the account MSMB Capital
7 Management, LP, please breakdown the 375,000 position into the
8 following certificates: 160,318; 24,046; 58,306; 37,809;
9 94,521.

10 Are those the five certificates we just saw on the
11 previous page?

12 A Yes.

13 Q Please FedEx the five certificates to this address, MSMB
14 Capital Management, LP attention Martin Shkreli, and then the
15 777 Third Avenue address appears again.

16 Ms. Merrill, what was this document?

17 A An instruction letter.

18 Q Did Standard Registrar break up the stock certificate as
19 requested?

20 A Yes, we did.

21 THE COURT: May I ask, are these stock certificates
22 for Desert Gateway at this point or for Retrophin?

23 THE WITNESS: Desert Gateway.

24 THE COURT: Thank you.

25 Q If we can keep following this series of transactions.

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1 Let's go to tab 18 in your binder, which is Government
2 Exhibit 125-18.

3 What is the transmittal number for this file?

4 A 80439.

5 Q What is the date of this transaction?

6 A February 19th, 2013.

7 Q Who requested this transaction?

8 A MSMB Capital Management.

9 Q Attention to who?

10 A Martin Shkreli.

11 Q Now, turning to the middle of this page, what happened in
12 this transaction?

13 A It transferred shares.

14 Q How do you know that it is a transfer as opposed to an
15 issuance?

16 A Because there is certificates received for cancellation.

17 Q Those certificates received on the top half of this
18 table?

19 A Yes.

20 Q And then the certificates that are then issued then are
21 on the bottom half; is that right?

22 A That's right.

23 Q So, there are five certificates on the top. Are the
24 numbers of those certificates the same as we saw a second ago?

25 A Yes.

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1 Q And those shares were transferred in the names of Darren
2 Blanton for 160,318 shares; Lindsey A. Rosenwald for 26,046
3 shares; Sarah Hassan, 53,306 shares; Barbara Warner Neill
4 separate property, 94,521 shares; and Schuyler B. Marshal IRA,
5 37,809 shares.

6 Ms. Merrill, were these shares restricted or
7 unrestricted?

8 A Restricted.

9 Q At the bottoms, are those physical or electronic?

10 A They are physical.

11 Q How would you know that they are physical as opposed to
12 electronic?

13 A There is no book entry stated.

14 Q Again what was the date on this transaction?

15 A February 19th, 2013.

16 Q So, let's go to the third page of this exhibit, Standard
17 000585. What is this document?

18 A It is an instruction.

19 Q From whom?

20 A Martin Shkreli.

21 Q Is it signed by him at the bottom right there?

22 A Yes.

23 Q On whose letterhead is it?

24 A MSMB Capital Management, LP.

25 Q It says, to whom it may concern, we wish to transfer the

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1 shares under this fund to the individual limited partners of
2 the fund as the fund is dissolving. Please send the
3 certificates by Federal Express to the following addresses.

4 Then you see it there, addresses for Darren Blanton,
5 Lindsay Rosenwald, Sarah Hassan, John Neill and Schuyler
6 Marshall?

7 A Yes.

8 Q If we go to the fifth page of this exhibit, Standard
9 000587.

10 Was this attached to the letter we just saw?

11 A Yes.

12 Q What is this document?

13 A This is further instructions on who to issue the shares
14 to and the amounts to issue.

15 Q Was this handwritten list provided to you by the
16 defendant?

17 A Yes.

18 Q So, let's go to a stock transaction for MSMB Healthcare.
19 I am showing you Government Exhibit 125-19 which is tab 19 in
20 your binder.

21 Ms. Merrill, what is the transmittal number for this
22 file?

23 A 80626.

24 Q What is the date for this transaction?

25 A March 7th, 2013.

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1 Q Who requested the transfer?

2 A MSMB Capital Management.

3 Q Attention to?

4 A Martin Shkreli.

5 Q Turning to the middle of the page, what happened in this
6 transaction?

7 A The shares were taken from book entry and put into
8 physical format.

9 Q The shares for whom?

10 A MSMB Healthcare LP and MSMB Healthcare Investors, LLC.

11 Q I see that for MSMB Healthcare LP, the shares were
12 473,274 and for MSMB Healthcare Investors, the number of
13 shares were 413. Were those the same numbers we saw
14 previously in the E-mail from the defendant?

15 A Yes.

16 Q Were these shares restricted or free trading?

17 A Restricted.

18 Q So let's go to the third page of this exhibit which is
19 Bates number Standard 000601. This is an E-mail from Martin
20 Shkreli dated February 18th, 2013, to you. He wrote, please
21 FedEx me all MSMB Healthcare LP, Desert Gateway certificates.
22 These certificates will be distributed to the fund's
23 underlining limited partners and then he provides an address.

24 What is the significance of this document to
25 Standard Registrar?

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1 A It is an instruction.

2 Q For what company were these shares?

3 A Desert Gateway.

4 Q So, let's go back one page to Standard 000600. What is
5 this document?

6 A It is a FedEx Air Bill.

7 Q To whom?

8 A Martin Shkreli.

9 Q And why does a FedEx Air Bill appear in the Standard
10 Registrar?

11 A We keep records of where we shipped the document or the
12 new certificates.

13 Q So, let's go to Government Exhibit 125-20, to keep
14 following with these series of transactions, that is tab 20 in
15 your binder.

16 What is the transmittal number of this transaction?

17 A 80689.

18 Q What is the date on the transaction?

19 A March 12th, 2013.

20 Q Who requested the transaction?

21 A MSMB Healthcare LP.

22 Q Now, let's focus on the table in the middle of the page.

23 What happened in this transaction?

24 A Shares were transferred from MSMB Healthcare to thirteen
25 new individuals.

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1 Q Did MSMB Healthcare turn in the stock certificate we saw
2 in the previous exhibit?

3 A Yes.

4 Q And how many shares came out after the transaction?

5 A 473,274.

6 Q I see entries here for Alan Geller, 156,968; Richard
7 Kocher, 23,564; David Geller, 30,514. And were these all
8 certificates that Standard Registrar issued to these people?

9 A Yes.

10 Q Were these shares restricted or freely trading?

11 A Restricted.

12 Q So let's go to the fourth page of the exhibit, Standard
13 000609. Who signed this document?

14 A Martin Shkreli.

15 Q On whose letterhead was he writing?

16 A MSMB Healthcare LP.

17 Q He wrote to whom it may concern.

18 MSMB Healthcare LP is a private limited partnership
19 which is divesting its stake in MSMB Healthcare to its
20 underlining limited partners. Therefore, as its sole managing
21 member, I am requesting you transfer ownership of the
22 certificate enclosed to the underlining partners with the
23 attached stock power and assignment attached and medallion
24 certified. Please call us if you have any questions.

25 What is the significance of this document?

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1 A This is a transfer instruction letter.

2 Q If we go to the next page, Bates number Standard 000610.

3 What is this document?

4 A It is an instruction on who to issue the shares and the
5 number of shares to each.

6 Q Who provided this handwritten table to Standard
7 Registrar?

8 A Martin Shkreli.

9 Q Do the numbers here match the numbers we saw on the first
10 page?

11 A Yes.

12 Q So, let's go back two pages to Standard 000608. Did
13 Standard Registrar in fact send the shares to Martin Shkreli?

14 A Yes.

15 Q Now, the date on this transaction was March 12th, 2013.
16 Let's take a step back in time to look at another stock
17 transaction. Let's go to Government Exhibit 125-4 which is
18 tab four in your binder.

19 Ms. Merrill what is the transmittal number?

20 A 79761.

21 (Transcript continues on next page.)

22

23

24

25

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1 (Continuing)

2 Q What's the date for this transaction?

3 A December 14th, 2012.

4 Q Who requested this transaction?

5 A Desert Gateway.

6 Q Now, calling your attention to the table in the middle.

7 What happened in this transaction?

8 A We issued stock.

9 Q And how do you know that it's an issuance versus a
10 transfer?

11 A There were no shares received for cancellation.

12 Q No shares turned to Standard Registrar?

13 A That's right.

14 Q What was the total number of shares in this transaction?

15 A 2,400,000.

16 Q And were these restricted or free-trading shares?

17 A Free-trading.

18 Q How do you know they were free-trading?

19 A There's no R by the certificate number.

20 Q And in this transaction, how many participants were
21 there?

22 A Eight.

23 Q And for Kevin Mulleady, how many shares did he receive?

24 A 350,000.

25 Q Thomas E. Fernandez?

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1 A 300,000.

2 Q Marek Lucjan Biestek?

3 A 300,000.

4 Q Timothy J. Pierotti?

5 A 350,000.

6 Q Claridge Capital LLC?

7 A 350,000.

8 Q Andrew R. Vaino?

9 A 250,000.

10 Q Edmund J. Sullivan?

11 A 100,000.

12 Q Troy Fearnow?

13 A 400,000.

14 MR. SRINIVASAN: Ms. Merrill, let's go to the fourth
15 page of this Exhibit, Bates Number Standard 000468.

16 (Exhibit published to jury.)

17 Q Ms. Merrill, before we look at the document or certain
18 parts of this document, what is this in general?

19 A It's a legal opinion.

20 Q And again, what's a legal opinion?

21 A It's a document we rely on to issue shares.

22 Q Who issues these legal opinions to Standard?

23 A Law firms.

24 Q I see at the top there, there's Anslow & Jaclin.

25 Do you know what an Anslow & Jaclin was?

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1 A A law firm.

2 Q How frequently do you get these letters from Counsel?

3 A All the time.

4 Q What's the date on the letter?

5 A December 14th, 2012.

6 Q Who is it addressed to?

7 A To me.

8 Q Amy is you in this?

9 A Yes.

10 MR. SRINIVASAN: Okay. So, if we could actually
11 just scroll down and then focus on the first paragraph,
12 Ms. Balbin.

13 The first paragraph reads: Dear Amy, we represent
14 Troy Fearnow. We have received a copy of the journal entry of
15 judgment dated the 10th day of December 2012 whereby the
16 District Court of Washington County, State of Oklahoma, in
17 Case Number CJ1294, styled Troy Fearnow versus Desert Gateway,
18 Inc. judgment awarded and directed the issuance of the
19 2,400,000 shares, the subject shares, of the company to
20 Fearnow pursuant to the conversion of promissory note dated
21 the 1st day of November 2008 in the amount of \$25,000 USD plus
22 accrued interest at the rate of eight percent per annum issued
23 by Desert Gateway to Fearnow. This legal opinion is being
24 rendered with respect to the subject shares which are being
25 issued to Fearnow, a copy of the judgment is enclosed

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1 herewith.

2 And Ms. Balbin, if we could do a split screen with
3 the sixth page of this Exhibit. And if we could focus in on
4 the conclusions section there. And just maybe the first line
5 of that subsequent paragraph, please.

6 Thank you.

7 (Exhibit published to jury.)

8 MR. SRINIVASAN: The conclusions section here says:
9 Based upon the above and subject to the assumptions and
10 qualifications set forth below, we of the opinion and hereby
11 direct you to issue the subject shares to the following in
12 book entry without a restrictive legend:

13 Kevin P. Mulleady 350,000.

14 Thomas E. Fernandez 300,000.

15 Marek Lucjan Biesteck 300,000.

16 Timothy J. Pierotti 350,000.

17 Claridge Capital LLC 350,000.

18 Andrew R. Vaino 250,000.

19 Edmund J. Sullivan 100,000.

20 The additional 400,000 shares should be issued in
21 book entry in the name of Troy Fearnow?

22 Q Ms. Merrill, are these the shares the same as reflected
23 in the first page of the Exhibit, the transmittal?

24 A Yes.

25 MR. SRINIVASAN: So, let's go to the next -- the

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1 seventh page of this document.

2 (Exhibit published to jury.)

3 MR. SRINIVASAN: And if we could zoom in on the
4 paragraph in the middle that starts: In the present case.

5 This reads: In the present case the company is the
6 issuer of the shares. The above named shareholders represent
7 that they are not an officer, not a director, and not a holder
8 of ten percent or more of the outstanding equity securities of
9 the issuer and does not, alone or together with any other
10 person, exercise control over the issuer. Based on my review
11 and investigation, the shareholders have no affiliation with
12 the issuer other than as an investor. The shareholders are in
13 no position to issue or propose to issue any security relating
14 to the company.

15 Q Ms. Merrill, what did Standard Registrar do after it
16 received all of these documents?

17 A We issued shares.

18 Q To the people reflected in that first page of the
19 Exhibit?

20 A Yes.

21 MR. SRINIVASAN: So, let's go to the 24th page of
22 this Exhibit. Bates Number Standard 000488.

23 (Exhibit published to jury.)

24 Q And who were, who is this FedEx label for?

25 A Marek Biesteck.

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1 Q And what was the address that it was sent to?

2 A 59 Denton Avenue, East Rockaway, New York 11518.

3 MR. SRINIVASAN: And if we go to the next page,
4 Standard 000489.

5 (Exhibit published to jury.)

6 Q Where were Edmund Sullivan's shares sent by Standard
7 Registrar?

8 A 45 Pineapple Street, Apt. 8-B, Brooklyn, New York 11201.

9 MR. SRINIVASAN: Now, let's talk about how some of
10 these shares were subsequently transferred. Let's go to
11 Government's Exhibit 125-23, which is tab 23 in your binder.

12 (Exhibit published to jury.)

13 Q Do you have tab 23, ma'am?

14 A Yes.

15 Q Okay. What is the transmittal number for this file?

16 A 80957.

17 Q And what is the date on this transaction?

18 A April 4th, 2013.

19 Q Who requested the transfer?

20 A Retrophin.

21 Q Now, turning to the middle of the page, what transaction
22 happened here?

23 A We transferred Troy Fearnow's 400,000 shares.

24 Q To whom?

25 A 100,000 to Lindsey Rosenwald and 300,000 back to Troy.

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1 Q To Troy Fearnow?

2 A Yes.

3 Q Why does Troy Fearnow's name appear twice in this
4 document, in the turning in certificates part and in the
5 certificates issued?

6 A We canceled his original certificate and issued him a new
7 book entry holding.

8 Q Ma'am, I think you said canceled certificates a few
9 times, I'm not sure we defined that term.

10 What does cancelling a certificate mean?

11 A When we transfer, we cancel whatever certificate is
12 submitted for the transfer.

13 Q So, does that mean that the certificate that's turned in
14 is basically not valid anymore?

15 A That's right.

16 Q Were these Retrophin shares restricted or freely-traded?

17 A Free-trading.

18 Q And how many shares are reflected for Lindsay Rosenwald
19 here?

20 A A hundred thousand.

21 Q And for Troy Fearnow book entry?

22 A 300,000.

23 MR. SRINIVASAN: So, let's keep up with this series
24 of transactions with tab 25, which is Government's
25 Exhibit 125-25.

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1 (Exhibit published to jury.)

2 Q Ms. Merrill, what is the transmittal number for this
3 transaction?

4 | A 81070.

5 Q What is the date on this transaction?

6 | A April 15th, 2013.

7 Q Who requested it?

8 | A Retrophin.

9 Q Turning to the middle of the page again, what transaction
10 happened here?

11 A We transferred Lindsey Rosenwald's shares.

12 Q And I see certificate 1750.

13 Is that the same certificate number we saw in the
14 previous Exhibit that Lindsey Rosenwald received?

15 | A Yes.

16 Q How many shares of Lindsey Rosenwald's were transferred?

17 A 20,000. To Thomas Koestler.

18 Q Oh, I see.

19 How many were turned in?

20 A Oh, I'm sorry, a hundred thousand.

21 Q And what came out on the other side of the transaction?

22 A 80,000 shares back into Lindsey Rosenwald and 20,000 to
23 Thomas Koestler.

24 Q Were these shares restricted or freely-traded?

25 | A Free-trading...

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1 MR. SRINIVASAN: So, let's go to the second page of
2 this Exhibit, base number Standard 000643.

3 (Exhibit published to jury.)

4 Q Now, what is this document?

5 A An e-mail.

6 Q And if we focus on the bottom e-mail.

7 Who wrote the e-mail?

8 A Evan Greebel.

9 Q Who was he writing to?

10 A Michael Fearnow and Martin Shkreli.

11 MR. SRINIVASAN: And it's dated April 10th, 2013.

12 Mr. Greebel wrote: The 50,000 shares that were owed
13 to Marek Biesteck should be broken down as follows: 30,000
14 shares shall be issued in the name of Lindsey A. Rosenwald, MD
15 and such shares shall be delivered to Katten Muchin Rosenman
16 LLP attention Evan L. Greebel, Esq.; 20,000 shares shall be
17 issued in the name of Thomas P. Koestler and delivered to
18 Katten Muchin Rosenman LLP, attention Evan L. Greebel.

19 The 50,000 shares that were owed to Edmund Sullivan
20 shall be issued in the name of Lindsey A. Rosenwald, MD and
21 such shares shall be delivered to Katten Muchin Rosenman,
22 attention Evan L. Greebel.

23 The transfer agent can combine the two certificates
24 for Rosenwald into one certificate for 80,000 shares.

25 And, Ms. Balbin, actually, if we could scroll up to

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1 the top e-mail there.

2 Q Ms. Merrill, was the bottom e-mail forwarded to you?

3 A Yes.

4 Q Who sent it to you?

5 A Michael Fearnow.

6 Q And on what date?

7 A On April 10th, 2013.

8 Q Ms. Merrill, what did Standard Registrar do in response
9 to these documents?

10 A We transferred the shares.

11 Q As reflected on the first page of the Exhibit?

12 A Yes.

13 THE COURT: At this point, when this was forwarded
14 to you, did Mr. Michael Fearnow have authority to direct these
15 transfers or were you relying on him or someone else?

16 THE WITNESS: Because Evan was involved we accepted
17 the instruction.

18 THE COURT: I see.

19 MR. SRINIVASAN: Now, we've looked at the
20 transaction related to Lindsey Rosenwald. Now let's look at
21 another stock transfer transaction.

22 If we can go to tab 28 of your binder, which is
23 Government's Exhibit 125-28.

24 (Exhibit published to jury.)

25 Q What does the transmittal number for this file?

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1 A 81549.

2 Q What's the date of the transaction?

3 A May 23rd, 2013.

4 Q Who requested the transaction?

5 A Retrophin.

6 Q And turning to the table in the middle of the page.

7 What happened in this transaction?

8 A We transferred 300,000 shares of Troy Fearnnow's book
9 entry shares.

10 Q Were these Retrophin shares?

11 A Yes.

12 Q And how were those shares transferred, those 300,000
13 shares?

14 A We transferred 47,128 to Richard Kocher.

15 2,873 to Martin Shkreli.

16 And 250,000 back to Troy Fearnnow in book entry.

17 Q Were these restricted or freely-traded?

18 A Free-trading.

19 MR. SRINIVASAN: Let's go to the ninth page of the
20 Exhibit, which is Standard 000679.

21 (Exhibit published to jury.)

22 Q And if we focus on the e-mail at the top who sent the
23 e-mail to you?

24 A Evan Greebel.

25 Q When did he send it?

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1 A Wednesday, May 22nd, 2013.

2 Q And he wrote: Amy, pursuant to the attached agreement,
3 please send me a stock certificate for 47,128 shares in the
4 name of Richard Kocher and 2,872 shares in the name of Martin
5 Shkreli. The shares for Richard Kocher should be
6 unrestricted. Please send them via Federal Express and
7 confirm that I will receive them by Friday, May 24th. If you
8 have any questions please call, best regards, Evan.

9 What was the significance of this document for
10 Standard Registrar's work?

11 A This was our instruction.

12 Q And was Evan Greebel again, an authorized person?

13 A Yes.

14 Q And why is at that?

15 A He was Counsel for the company.

16 Q And Ms. Merrill, what did Standard Registrar do after it
17 got these documents?

18 A We transferred the shares.

19 MR. SRINIVASAN: Now, that was for Richard Kocher.
20 Let's look at another share transfer related to Darren
21 Blanton.

22 Let's turn to Government's Exhibit 125-37. This is
23 tab 36 in your binder.

24 (Exhibit published to jury.)

25 Q What is the transmittal number for this file?

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1 A 84838.

2 Q And the date of the transaction?

3 A March 7th, 2014.

4 Q Who requested the transfer?

5 A Retrophin.

6 Q Now, turning to your attention to the middle of the page.

7 What happened in this transaction?

8 A We issued 200,000 shares to Colt Ventures Limited.

9 Q And again, how do you know that it's an issuance as
10 opposed to a transfer?

11 A We didn't cancel any shares.

12 Q Were these restricted or freely trading Retrophin shares?

13 A Restricted.

14 MR. SRINIVASAN: So, let's turn to the fourth page
15 of the document, which is Bates Number Standard 000757.

16 (Exhibit published to jury.)

17 Q What is this document?

18 A An e-mail.

19 Q From who?

20 A Evan Greebel.

21 MR. SRINIVASAN: And he sent it on March 7th, 2014,
22 and he sent it to you.

23 It says: Hi, Amy, please issue 200,000 shares of
24 RTRX --

25 Q What is RTRX?

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1 A Retrophin.

2 MR. SRINIVASAN: -- common stock to Colt Ventures
3 LTD, who is a new consultant to Retrophin. The stock is
4 restricted and should have the appropriate legend placed on
5 it. The certificate should be sent to -- and then there's an
6 address in Dallas. Please, advise when it is completed and
7 send me the tracking number. Thanks, Evan.

8 Q And what's the significance of this document here?

9 A This is our instruction.

10 MR. SRINIVASAN: So, let's turn to the fifth page of
11 this document. Bates Number Standard 000758.

12 (Exhibit published to jury.)

13 Q What is this document?

14 A A consulting agreement.

15 Q And looking at the first page, who is it between?

16 A Retrophin and Darren Blanton.

17 Q And what is the date that's reflected on the first
18 paragraph here?

19 A March 6th, 2014.

20 Q Was it attached to the materials that Evan Greebel sent
21 you?

22 A Yes.

23 Q And was it part of the file that Standard Registrar took?

24 A Yes.

25 Q Ms. Merrill, does Standard typically get agreements of

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1 some kind in response to stock transfer requests?

2 A Yes.

3 Q And looking at the documents in your file, did you
4 receive any Retrophin Board resolutions in relation to this
5 consulting agreement?

6 A No.

7 Q And in response to the documents that you got, what did
8 Standard Registrar do?

9 A We issued the shares.

10 MR. SRINIVASAN: So, let's go to tab 38 of your
11 binder, Government's Exhibit 125-38.

12 (Exhibit published to jury.)

13 Q What's the transmittal number for this?

14 A 85150.

15 Q What's the date on the document?

16 A March 27th, 2014.

17 Q And who is the recipient of shares here?

18 A Colt Ventures.

19 Q How many shares?

20 A 200,000.

21 Q Is this an issuance or a transfer?

22 A An issuance.

23 MR. SRINIVASAN: So, let's go to the fourth page of
24 this document, which is Bates Number Standard 000779.

25 (Exhibit published to jury.)

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1 MR. SRINIVASAN: It's an e-mail dated March 7th,
2 2014, from Evan Greebel to you and it says: Hi, Amy, please
3 issue 200,000 shares of RTRX common stock to Colt Ventures LTD
4 who is a new consultant to Retrophin. The stock is restricted
5 and should have the appropriate legend placed on it. The
6 certificate should be sent to -- an address in Dallas.
7 Please, advise when it is completed and send me the tracking
8 number.

9 Q Ms. Merrill, in the previous Exhibit, I think we just saw
10 a March 7th, 2014 e-mail from Evan Greebel.

11 What explains this second issuance of stock?

12 A It appears to be a duplicate.

13 Q Was that a mistake on Standard Registrar's part?

14 A Yes, it was.

15 MR. SRINIVASAN: Now, that was for Darren Blanton.
16 Let's go to another stock transfer transaction for Lee Yaffee.
17 If you go to tab 37 of your binder, which is Government's
18 Exhibit 125-37.

19 (Exhibit published to jury.)

20 Q What's the number for this transmittal?

21 A 85042.

22 Q What's the date on the transaction?

23 A March 20th, 2014.

24 Q Focusing on the middle of the page, what transaction
25 happened here?

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1 A We issued 15,000 shares to Lee Yaffee.

2 Q Shares of what company?

3 A Retrophin.

4 Q Was this a new issuance or a transfer?

5 A A new issuance.

6 Q Okay. Were these restricted or freely-trading?

7 A Restricted.

8 MR. SRINIVASAN: Can we go to the fifth page of the
9 Exhibit, Bates number Standard 000768.

10 (Exhibit published to jury.)

11 Q What is this document?

12 A It's an instruction letter.

13 Q Who sent it?

14 A Marc Panoff.

15 Q And what was his title?

16 A Chief financial officer.

17 Q Of Retrophin?

18 A Yes.

19 MR. SRINIVASAN: And this document says: This
20 letter serves an authorization and instruction for Standard
21 Registrar and Transfer Company, Inc. to make the following
22 changes to shareholder accounts for Retrophin, Inc. Please
23 issue 15,000 shares of restricted common stock to Lee Yaffee.
24 Lee signed an agreement in Retrophin in December 2013 that
25 required payment of 15,000 shares of common stock. Lee

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1 Yaffee's settlement and release agreement is attached.

2 Let's go to the sixth page of this document, which
3 is Standard 769.

4 (Exhibit published to jury.)

5 Q What is this document?

6 A Consulting agreement.

7 Q If we focus on the first page of the first paragraph, who
8 are the parties?

9 A Retrophin and Lee Yaffee.

10 Q Ms. Merrill, looking through the file that you have, did
11 Standard Registrar receive any Board resolutions relating to
12 this consulting agreement?

13 MR. BRAFMAN: Objection.

14 THE COURT: I'm sorry, can you rephrase the
15 question, please.

16 MR. BRAFMAN: The objection is it implies an
17 obligation.

18 MR. SRINIVASAN: Can we have a side-bar, Your Honor.

19 THE COURT: No speaking objections, please.

20 Okay, side-bar.

21 (Side-bar conference held on the record out of the
22 hearing of the jury.)

23

24 (Continued on following page.)

25

Side-Bar

4562

1 (Side-bar.)

2 MR. BRAFMAN: Judge, the questions suggest that
3 there is a legal obligation of the Board to send her a
4 resolution when this happens. She A) isn't a lawyer and
5 second, there is no proof in the record that there is a legal
6 obligation from the Board to send to them or anyone else or a
7 legal obligation for the Board to approve this transaction.

8 MR. SRINIVASAN: I'm not asking her if the Board
9 approved it or if she received any documents about approval.
10 All I'm asking her is just establishing the fact of whether
11 such a document exists. And then obviously, there's going to
12 be further argument on that point.

13 But I'm not asking her if there's anything approving
14 it or any documents she's received from the Board. We haven't
15 established that the Board resolution's necessary. We haven't
16 done anything with this witness. It's just simply whether a
17 piece of paper is in this file or not.

18 MR. BRAFMAN: You know that it doesn't exist.

19 MR. SRINIVASAN: But the jury doesn't know that.

20 MR. BRAFMAN: How is it relevant?

21 MS. ZELLAN: There's no requirement.

22 THE COURT: Look, I think if you were to ask her
23 whether she sees Board resolutions for this kind of
24 transaction and whether there's such a Board resolution in her
25 file, without soliciting whether or not it is necessary, I

Side-Bar

4563

1 think it should be okay.

2 MR. SRINIVASAN: Okay. Just so I'm clear, I'll ask
3 her just in general whether she sees Board resolutions and
4 stock transfer.

5 THE COURT: In stock transfers like this.

6 MR. BRAFMAN: Judge, every company is different.
7 There are some companies that may notify them not to do
8 anything absent a Board resolution. So, to ask her whether
9 she sees resolutions is worse than the original question we
10 objected to.

11 If, over objection, you allow them to ask whether
12 there is a Board resolution in this case, then over our
13 objection, that's the question. You can't just ask her, does
14 she see Board resolutions because there may be some companies
15 who notify Standard Registrar not to do anything absent a
16 Board resolution.

17 MS. SMITH: That's fine, Your Honor. We can just
18 establish that there's no Board resolution in these files.

19 MR. SRINIVASAN: All I'm trying to establish --

20 THE COURT: All right. So, we are back to where we
21 started.

22 All right, that's fine. Thank you.

23 (Side-bar end.)

24

25 (Continued on following page.)

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1 (In open court.)

2 BY MR. SRINIVASAN:

3 MR. SRINIVASAN: Ms. Merrill, I will ask the last
4 question again.

5 Q Based on the documents in the Standard Registrar file, do
6 you see any Retrophin Board resolutions relating to this
7 transaction?

8 A No.

9 MR. SRINIVASAN: Okay. So, let's go to Government's
10 Exhibit 125-39, which is tab 39 in your binder, to keep
11 following this transaction.

12 (Exhibit published to jury.)

13 Q What is the transmittal number here?

14 A 85281.

15 Q What is the date of this transaction?

16 A April 2nd, 2014.

17 Q Who requested it?

18 A Retrophin.

19 Q And what transaction happened here?

20 A We transferred Lee Yaffee's shares to E-Fay Limited
21 Partnership.

22 Q How many shares?

23 A 15,000.

24 Q Restricted or unrestricted?

25 A Restricted.

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4565

1 MR. SRINIVASAN: So, let's go to the third page,
2 which is Bates number Standard 000788.

3 (Exhibit published to jury.)

4 Q What is this document?

5 A It's an instruction.

6 Q Who sent it to you?

7 A Lee Yaffee.

8 Q And what is the date on the document?

9 A March 27th, 2014.

10 MR. SRINIVASAN: Mr. Yaffee wrote: To Whom It May
11 Concern: Please send the certificate that was issued for the
12 15,000 shares of Retrophin stock certificate number 2084. The
13 stock certificate should be issued in the name of E-Fay
14 Limited Partnership not my individual name. Evan L. Greebel
15 of Katten Muchin Rosenman LLP, general counsel of Retrophin,
16 instructed me to overnight back the Retrophin stock
17 certificate requesting that you re-issue in the correct name
18 E-Fay Limited Partnership and forward back the corrected stock
19 certificate to me at my address above in Delray beach. If you
20 have any questions or concerns, please don't hesitate to call
21 me or Evan. Again, I appreciate your efforts on my behalf.
22 Sincerely, Lee Yaffee.

23 Q What did Standard Registrar do in response to these
24 documents?

25 A We transferred the shares.

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1 MR. SRINIVASAN: So, let's look at one more entry,
2 Ms. Merrill.

3 Ms. Balbin, could you please pull up Defendant's
4 Exhibit 125-1.

5 (Exhibit published to jury.)

6 MR. SRINIVASAN: And if we could focus on the top
7 part of the table near the middle of the page again.

8 Q And this is again, for which transmittal number?

9 A 79738.

10 Q And I think that we saw this table at the very beginning.

11 What is the date on this transaction?

12 A December 13th, 2012.

13 Q Who is it requested by?

14 A Desert Gateway.

15 Q And when did Standard Registrar complete this request or
16 this transaction?

17 A December 13th, 2012.

18 Q And what is Martin Shkreli's book entry in this
19 transaction?

20 How many shares, I'm sorry?

21 A 2,577,755.

22 MR. SRINIVASAN: And if we could do a split screen,
23 Ms. Balbin, with this page and the 80th page of this Exhibit,
24 Bates number R012100.

25 (Exhibit published to jury.)

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4567

1 MR. SRINIVASAN: And on the right-hand side, which
2 is the 80th page of the Exhibit, can we focus on the second
3 entry there, one more down.

4 Q What is the transmittal number for this transaction?

5 A 84165.

6 Q What was the date on this transaction?

7 A January 15th, 2014.

8 Q I'm sorry, I didn't hear you. What was that?

9 A It's January 15th, 2014.

10 Q Who requested the transaction?

11 A Retrophin.

12 Q And when did Standard Registrar complete the transaction?

13 A January 15th, 2014.

14 Q Ms. Merrill, in the section that says certificates
15 received for transfer, what is Martin Shkreli's book entry
16 here?

17 A It's 2,577,755 shares.

18 Q And looking back on the left-hand side of the first page,
19 is that the same number as reflected in December 13th, 2012?

20 A Yes.

21 MR. SRINIVASAN: One moment, Your Honor.

22 (Pause in the proceedings.)

23 MR. SRINIVASAN: Thank you, no further questions at
24 this time.

25 THE COURT: All right, thank you.

Proceedings

4568

1 Would the jurors like a mid-morning break right now
2 before we start the cross?

3 THE JURY: Yes.

4 THE COURT: All right.

5 Please, do not discuss the case and we will come
6 retrieve you in about ten minutes.

7 Thank you.

8 THE COURTRoom DEPUTY: All rise.

9 (Jury exits.)

10 (In open court; outside the presence of the jury.)

11 THE COURT: All right, let's take a ten-minute
12 break, thank you.

13 (Recess taken.) (In open court.)

14 (Judge KIYO A. MATSUMOTO enters the courtroom.)

15 THE COURTRoom DEPUTY: All rise.

16 THE COURT: Have a seat, thank you.

17 MS. ZELLAN: Your Honor, we can do this again in
18 front of the jury, but we will not be having a
19 cross-examination of Ms. Merrill.

20 THE COURT: So, then we are going to send the jury
21 home?

22 MS. KASULIS: Yes, Your Honor, that's our only
23 witness for the day.

24 THE COURT: All right.

25 Well, we will bring them in. They will be pretty

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1 happy about that. It is summertime.

2 All right, since they are all ready to come in, we
3 will bring them in.

4 MS. ZELLAN: Sure.

5 THE COURT: Ms. Zellan, I will ask you in front of
6 the jury whether you wish to cross-examine or whether the
7 Defense wishes to cross-examine and you will just say no on
8 the record, all right?

9 MS. ZELLAN: Thank you, Your Honor.

10 THE COURT: Okay, thank you.

11 THE COURTROOM DEPUTY: All rise.

12 (Jury enters.)

13 THE COURT: All the jurors are present. Please,
14 have a seat.

15 Does the Defense wish to cross-examine Ms. Merrill?

16 MS. ZELLAN: Your Honor, we have no
17 cross-examination for this witness.

18 THE COURT: All right.

19 Well, in that case, at this time I will excuse the
20 witness and thank her for her time.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Is the Government prepared to call a
24 witness this afternoon or at this time?

25 MS. SMITH: Your Honor, we have some additional

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1 issues we wish to resolve before the next witness gets on the
2 stand, so we will resume Monday morning.

3 THE COURT: Well, ladies and gentlemen, at this time
4 then I will excuse you for the day. I want to thank you for
5 coming in this morning and I want to thank you for your
6 ongoing service.

7 Please, refrain from discussing this case, maintain
8 your open mind and do not read any media coverage about this
9 case or Mr. Shkreli. I want to thank you again and have a
10 nice weekend. I will see you Monday morning at 9:00 o'clock.

11 Thank you.

12 THE COURTRoom DEPUTY: All rise.

13 (Jury exits.)

14 (In open court; outside the presence of the jury.)

15 THE COURT: All right. Please, have a seat and if
16 somebody needs to be heard about a legal issue, I am happy to
17 hear from you.

18 MS. SMITH: Your Honor, just a few housekeeping
19 things from yesterday, as well.

20 We had talked about calling witnesses from NAV and
21 from VRC and we are in the process right now of trying to get
22 them both here on Monday. So, and they both need to fly out,
23 one from Chicago one from California, so we're working on
24 those arrangements.

25 For NAV we had previously marked a set of documents,

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1 which, obviously, the defendants have. This is obviously --
2 yesterday was the first time we had heard the argument that
3 someone other than Mr. Shkreli might have been providing
4 information to NAV. There are literally thousands of e-mails
5 where the defendant is providing information to NAV and
6 directing them to do things.

7 We will go through and pick a selection of them and
8 mark those as additional Exhibits for NAV. We're going to try
9 to keep it in kind of the 15-to-20 document range from the
10 various time opponents to establish that Mr. Shkreli was the
11 one providing information and directing NAV in connection with
12 MSMB Healthcare.

13 THE COURT: Is that acceptable to the Defense?

14 MS. SMITH: As opposed to? I mean, we need to be
15 able to prove this.

16 THE COURT: I know, I just want to make sure that
17 the Defense is not going to object.

18 You wanted to use a sample; is that right? To
19 represent the total universe of communications between
20 Mr. Shkreli and NAV regarding performance reports, right?

21 MS. SMITH: There are thousands of them.

22 THE COURT: Yes, I know.

23 So, what is the Defense view? Do we need to put all
24 those communications in evidence?

25 MR. AGNIFILO: We definitely don't need to put them

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1 all in. I guess what would be fine from our perspective, when
2 the Government knows their sampling, they could send them to
3 us. And if there's something about their sampling that we
4 don't think captures the whole situation, we can deal with
5 that.

6 MS. SMITH: The Defense is free to mark and suggest
7 Exhibits, themselves. They have had these documents for over
8 a year.

9 MR. AGNIFIL0: That's fine.

10 THE COURT: You might also think about a stipulation
11 regarding that issue, but maybe you will not be able to agree.

12 MS. SMITH: We had a stipulation. The Defense seems
13 to not be interested at this point in stipulating. So, we're
14 happy to just put the documents in and argue from there.

15 THE COURT: All right.

16 MR. AGNIFIL0: Okay.

17 MS. SMITH: So, we will provide those Exhibits
18 today. We spent a lot of time last night going through
19 thousands of e-mails an trying to pick out the representative
20 ones.

21 For VRC, we are getting a document production from
22 them today. It's a pretty small production. I believe the
23 defendant provided three documents to VRC, received two
24 reports. There are a couple of invoices and engagement
25 letters and a small number of e-mails. So, once we get those,

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1 we will provide them to the Defense and we will also mark what
2 we will use with the VRC witness on Monday.

3 Based on some of the conversations we had yesterday,
4 we are going to be marking additional documents for the case
5 agent, since there seems to be some confusion on certain
6 things from the Defense. So, we will broaden our scope for
7 the case agent and provide some additional documents for the
8 case agent today as well.

9 We have not yet received a witness list from the
10 Defense. I know they said they were going to give it to us on
11 Tuesday and then on Thursday and we have asked for it
12 repeatedly. We haven't received anything other than the
13 longer list. There have been, we had had conversations all
14 last week, but we have had nothing official. And at this
15 point, it looks like Defense case will probably start mid-next
16 week and we need the names before we go into the weekend at
17 this point.

18 THE COURT: Well, I think the request is
19 appropriate.

20
21 (Continued on following page.)
22
23
24
25

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1 (Continuing.)

2 MR. BRAFMAN: I would be able to provide it on
3 Sunday, provided that they tell me whether or not Al Geller is
4 or is not going to testify because that could impact who we're
5 going to call and if we call any witnesses and so far I've
6 heard nothing definitive on that issue.

7 MS. SMITH: We'll make the decision on Al Geller
8 today. I'm not sure why we can't get the universe of other
9 witnesses. We're not asking for the final list, but just the
10 same courtesy that we extended to the defendant we expect to
11 be extended back.

12 MR. BRAFMAN: As soon as we hear about Mr. Geller,
13 we'll give them our list. If we hear today, we'll give it to
14 them today.

15 THE COURT: Is there any reason why you could not
16 give them a list that describes if Al Geller testifies these
17 are our witnesses. If he doesn't these --

18 MR. BRAFMAN: Let me talk to my team when we get
19 back to the office and see if we can get them any guidance.

20 THE COURT: I think that would be appreciated and
21 the parties have adhered to have mutual courtesies on this
22 issue. I think it is only fair that you provide that
23 information earlier than Sunday so that they can prepare. I'm
24 hoping that can be the case.

25 MS. SMITH: We're trying to avoid of trial just as

1 the defendants need to bring documents and have gone through
2 documents for witnesses, we do as well.

3 MR. BRAFMAN: There's not going to be a delay and
4 any document that we would offer they have had for years and
5 the thing about Mr. Geller is we have a wealth of information
6 in this courtroom about him because we never know when he's
7 coming.

8 We have to drag it all back to our office or leave
9 it here if he's not going to testify. So if they know they
10 should tell us and if they don't want to tell us, that's fine.

11 MS. SMITH: We're going to make a decision at the
12 end of the day today so we will let them know.

13 MR. BRAFMAN: We will give them our defense list at
14 the end of the day once they tell us.

15 THE COURT: All right.

16 MS. SMITH: There were a couple of other issues,
17 most significantly this issue of Mr. Shkreli not having any
18 fiduciary duties to Retrophin. This was not raised as an
19 issue prior to trial. It was not part of the defense theory,
20 as far as we understood until yesterday, and I think that
21 Ms. Kasulis and I were a little taken aback.

22 We've actually never had a situation where the
23 defense has been a corporate officer, does not owe a duty of
24 loyalty to the company and may do anything they want with the
25 shares and money of a public company. It is not in fact the

1 law.

2 The Delaware General Corporation Law is very clear
3 about the duties of officers and directors and they're very
4 clear about related party transactions which the settlement
5 agreements and consulting agreements were.

6 So we are very concerned about the argument that is
7 contrary to law and we are concerned about confusion for the
8 jury and so we have two things that we're going to do as a
9 result which we would have done prior to trial but we did not
10 realize that that was the defense.

11 We are going to call a custodian from the Delaware
12 Secretary of State Division of Corporations. We had someone
13 who can be available on Monday. Just like Ms. Oremland
14 explained what Rule 13(d) and Rule 144 were, she can explain
15 what Title 8 of the Delaware Corporate Law Statute says,
16 particularly about the role of directors and officers and the
17 role of related-party transactions and the disclosures related
18 to them.

19 And, you know, Your Honor, so far in this case
20 there's already evidence, Government Exhibit 119-5 is the
21 certificate of incorporation of Retrophin which very clearly
22 states that it's pursuant to the laws of Delaware.

23 In many of the SEC filings it references the
24 Delaware General Corporation Law's various sections including
25 in the Desert Gateway 10-K -- excuse me 8-K, which is

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1 Government Exhibit 601 and a number of the other SEC filings
2 that the defendant has signed and, so, as with Ms. Oremland,
3 there's not going to be any opinion testimony about the
4 applicability of the law to the case, but simply what the law
5 is.

6 In addition, once Your Honor provides the jury
7 charge, we will provide additional suggested instructions on
8 the law of Delaware because this suggestion that, you know,
9 the defendant can do whatever he wants again in terms of
10 issuing shares and money of a public corporation is contrary
11 to law and is in general and is particularly contrary to law
12 on related party transactions.

13 So just to alert the defense, in many cases we
14 actually have the case agent put in Title 8 which is -- you
15 know, we didn't actually think it was necessary here because
16 we thought this was kind of an obvious principle, but since it
17 seems to be not obvious to the defense, we're happy to do it
18 through the case agent or we can call someone from Delaware.
19 He's prepared here to come here on Monday. We can do it
20 through the case agent or through the witness from Delaware.

21 MR. AGNIFILO: On this point, I'm concerned that
22 this witness would be testifying as an expert in Delaware law.
23 There's been no expert notice. There's no dispute about that.

24 THE COURT: She explained why not because she wasn't
25 aware that you were going to be raising the defense that there

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1 was no particular duty under law.

2 MS. SMITH: In fact, if this would have been, for
3 example, a motion to dismiss the indictment or some sort of
4 defect in the pleading that there was not actually a duty that
5 was owed, we haven't heard any of it. Literally yesterday is
6 the first time we heard that.

7 As with Ms. Oremland, it's not expert testimony.
8 It's just explaining laws that are referenced in the documents
9 that are already in evidence and because it is a question of
10 law we will provide an additional jury instruction so that
11 when the jury deliberates, to the extent that the defense is
12 going to try to argue that there was no duty, they can know
13 that under the laws of Delaware under which Retrophin was
14 incorporated by the defendant, he did in fact have certain
15 duties.

16 MR. AGNIFILO: Your Honor, if I could. It's our
17 position that the Government has not made out a definitive
18 principle that Mr. Shkreli violated by doing some of the
19 things that he charged with doing in Count 7.

20 It's not a defense that we have to give pretrial
21 notice of some sort and it's not a defense that we failed to
22 give pretrial notice of in any way, shape or form. Our
23 position is that it's part of the Government's lengthy
24 presentation of evidence.

25 They failed to establish that Mr. Shkreli violated

1 some rule, some law, some principle that he would have known
2 in the way he conducted himself as part of Count 7. So what
3 we put on the record for the first time yesterday should be no
4 surprise to anyone because I think even Your Honor knows that
5 the Government had failed to establish or might have failed to
6 establish or Your Honor was having questions as to what rule,
7 law, was broken by Mr. Shkreli in how he handled himself as
8 part of the Retrophin count, in Count 7.

9 It's not a defense, certainly not an affirmative
10 defense. This is the defense recognizing that the Government
11 has failed in our opinion to make out certain elements of the
12 charged crime. As a result, it is our concern that in the
13 absence of some definite rule as part of the Government's case
14 up until this point, the Government has free reign to say what
15 the CEO of Retrophin could and could not do.

16 What they're trying to do now at this late hour,
17 five weeks into the trial, is to bring in expert testimony or
18 for whatever we are four weeks into the trial, is bring in
19 expert testimony which they just told us about when they just
20 told Your Honor ten minutes ago to opine on Delaware law. So
21 I think that this should be precluded.

22 I think it's expert testimony. They should have
23 thought about their case before the trial started. They
24 should have figured out, are we going to be able to prove
25 whether Shkreli violated a rule or a law before the trial

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1 started, they didn't, and at this time they're saying we think
2 we might need a Delaware law expert.

3 They didn't give notice and we object to that
4 witness.

5 MS. SMITH: Your Honor, it's not a Delaware law
6 expert. It's the law of Delaware. The same way that Rule 13,
7 Rule 144, we'll explain the law of corporations which we
8 thought the defense understood. You know, Section 144 of the
9 Delaware code for the corporation law says very clearly the
10 processes and procedures that are required for related-party
11 transactions like the settlement and consulting agreement.

12 Mr. Massella testified about related-party
13 transactions and that anything between Retrophin and MSMB
14 would be a related-party transaction. The board members
15 testified about what the duties of a CEO are and what officers
16 are and, frankly, we just didn't think it was in dispute.

17 So we were shocked to get an argument that is
18 contrary to actual law and the jury has the right to know what
19 the law is and not what Mr. Shkreli would like the law to be.

20 MR. AGNIFILO: Your Honor, I think what happened is,
21 my perception, I thought the Court asked some very pointed,
22 direct questions of the Government yesterday on Count 7 and I
23 thought what the Court's questions were focusing on is what
24 has the Government proven in the trial evidence to date that
25 showed that Mr. Shkreli violated a law. That was the Court's

1 terminology, did he violate a law.

2 You asked that question of the government. Your
3 Honor's question caused them to go back and thin, maybe we
4 didn't actually establish that he violated a law. So they go
5 back and said we assumed everybody knew that Delaware law, A,
6 was the law that governed this case. We're hearing that for
7 the first time; and, B, we thought that the defense would have
8 known Delaware law.

9 That's not what happened at all. I think that
10 everyone who sees this case right now sees that they have not
11 established in the trial evidence to date that Mr. Shkreli did
12 anything wrong. He did something that they don't seem to like
13 as the prosecutors, but that's precisely why there's such a
14 problem with this count because they're shifting sands.

15 It's not clear, is he supposed to get board approval
16 or is he exposed to notify the board. Are there limits on
17 what he can do on certain board approval. Do those limits
18 have dates. These things are all in dispute.

19 So I think yesterday when the subject came up and
20 Your Honor is asked the Government directly, did he violate a
21 an law, is it your position that he violated a law, they went
22 back last night and said we better figure out what law he
23 could have violated and now they come with this this morning
24 for the first time deep into this trial, without giving us
25 pretrial notice of this witness' testimony and again we

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1 object.

2 MS. SMITH: Your Honor --

3 THE COURT: I don't think I have to decide who is at
4 fault in this because I think the idea is to make sure that
5 both the evidence and the law as instructed will be correct
6 and complete.

7 Would an instruction on Delaware law obviate the
8 need to call this person from the Delaware State Corporation
9 of Office, given that we have evidence in the record that this
10 is a Delaware Corporation governed under the laws of Delaware
11 and those exhibits are in evidence with an instruction
12 appropriate?

13 I am just a little concerned because I do not want
14 to confuse the jury about trial evidence and fact-based
15 evidence and legal instructions. So that's a question that
16 might obviate the need to call a witness or just eliminate
17 this dispute.

18 MS. SMITH: Your Honor, I think we can consider that
19 and let you know. I think we also just need to talk to the
20 witness. We just have to kind of get a sense of what that
21 testimony -- we were trying to pull this together this
22 morning.

23 I take issue with Mr. Agnifilo's character statement
24 of us not being able to explain what the crime is. The crime
25 is wire fraud. It's a scheme or artifice is defraud in order

1 to get money. It's not very complicated. I think the defense
2 attempting to obfuscate what is actually the crime here, both
3 with the cap table as well as the settlement and consulting
4 agreements.

5 We don't need to get into that now. I think it's an
6 issue for -- to the extent that they have issues with the way
7 the jury instructions are written and we can address it at
8 closing, but we do not want the jury to walk away with a
9 misimpression about what the law actually is and this constant
10 yesterday discussion about how the --

11 Like I said, it's in the SEC filings, for example,
12 and these were things that we didn't think we necessarily had
13 to belabor at this point, but the SEC filings talk about when
14 under Delaware law directors and officers can be indemnified
15 for their actions. There's a section that says that they
16 can't be indemnified if there's any transaction from which the
17 director derives an improper benefit.

18 There's also of this language in the SEC filings.
19 We haven't had the case agent testify. To the extent that
20 Mr. Agnifilo didn't pick up on it or didn't understand that
21 the information was already in there it was part of what the
22 case agent was going to do anyway.

23 Like I said, it's quite common for the case agent to
24 kind of walk through documents so that the jury can understand
25 them, that are already in and there are additional SEC filings

1 that are on the list for the case agent. We didn't think that
2 the defense was going to try and make an argument that was
3 contrary to law.

4 We will think about the jury instructions and speak
5 to the witness from Delaware who's set to testify to the
6 extent that there is confusion created around what the
7 obligations of directors and officers are. So, we will do
8 that and we can let the Court and defense know.

9 MR. AGNIFIL0: I don't think the observations
10 directed --

11 THE COURT: This is like two children arguing. I
12 don't want to hear --

13 MR. AGNIFIL0: Can I be the adult in the room?

14 THE COURT: You been the adult. I just don't want
15 personal attacks or for each party to assume that the other is
16 operating with ill intent.

17 This has been an intense three-week trial and
18 there's a lot of evidence here and I think it's fair to say
19 that both sides maybe didn't fully comprehend the other
20 parties position, maybe, but what I think what we're looking
21 for is a path forward. It doesn't do any good to cast blame
22 or -- some of the language in the submissions yesterday were
23 really unacceptable. You can get to the merits without
24 attacking your adversary.

25 MR. BRAFMAN: Your Honor, yesterday was an

1 interesting day for us because it wasn't us who raised the
2 concern. It was Your Honor who raised the concern as to Count
3 7 and most respectfully, pointedly and correctly asked the
4 government what rule or law did Mr. Shkreli violate if you say
5 he wasn't authorized to give these shares, and our argument
6 was that as the founder of the company and as the person who
7 had a whole host of responsibilities that Mr. Aselage said he
8 could do without board approval. He could hire and fire
9 people.

10 At the end of the day there's no evidence in here
11 even suggesting that Mr. Shkreli was not permitted to give
12 people shares in Retrophin if he as the founder and as the CEO
13 felt it would provide a benefit to the company.

14 And the reason why the rules that were just read
15 concerning Delaware law are inappropriate, either as evidence
16 or as a predicate for legal instruction is because the law as
17 written doesn't suggest that what Mr. Shkreli did was wrong.
18 It requires an understanding of the evidence and an
19 understanding of what Mr. Shkreli did, why he did it and
20 whether or not that implies that it would be an inappropriate
21 benefit to Mr. Shkreli or an inappropriate cost to Retrophin.
22 It's a fact-specific case.

23 And for you in a federal trial, Your Honor, to give
24 the jury a statement about Delaware law as if they conclude at
25 the end of that if you violate Delaware law, he's guilty of

1 wire fraud in federal court I think would add to the
2 confusion, not clarify the confusion. I think we both need to
3 think about this and we'll give Your Honor our respective
4 positions. There's an obstruction that these issues shouldn't
5 be addressed on one foot. Each side is trying to wing it now
6 because given yesterday's conference each side needs to
7 determine what they may need to address is prior to the end of
8 the case or the charging conference case.

9 THE COURT: I appreciate that, but let me just say
10 Mr. Brafman I was someone that outlined the issues to be
11 raised. You made the point that what law precluded
12 Mr. Shkreli from -- you know, they were transactions that he
13 had elected. My question was to ask the government a followup
14 because I didn't feel that they were necessarily responding to
15 your point. It raised a question in my mind as well.

16 But the point is this: I think that -- I want to
17 clarify something also. You are talking about the wire fraud
18 count. It's a conspiracy. He's not being charged with wire
19 fraud. It's a conspiracy to commit wire fraud. It's a
20 different instruction than a flat wire fraud instruction.
21 Conspiracy to commit wire fraud, right.

22 MS. KASULIS: Right.

23 THE COURT: And most of the times you have a count
24 of wire fraud and conspiracy to commit wire fraud. The thing
25 about this case is that you only have conspiracy to commit

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1 wire fraud. I want to be sure that our records understand
2 that it's a conspiracy to commit wire fraud, not wire fraud
3 itself.

4 MS. KASULIS: Your Honor, we can point the defense
5 and Your Honor to the Delaware law. Section 144 specifically,
6 Your Honor, about interested directors and if there's a
7 contract or a transaction between the corporation and one of
8 the interested directors.

9 There has to be an affirmative vote of the majority
10 of the disinterested directors on the board of directors in
11 order for that contract to be approved and valid under
12 Delaware law. I think we have established by both of the
13 other board members at the time that Mr. Shkreli entered into
14 these agreements that neither of them as disinterested parties
15 affirmatively voted for the related-party transactions that
16 Mr. Shkreli entered into and are actually called related-party
17 transactions in the SEC filings, the amended SEC filings, that
18 were disclosed in September of 2013.

19 I don't think that there is a dispute that these
20 were in fact related-party transactions and, so, I just want
21 to direct Your Honor's attention to that section because it
22 appears that that argument is in fact prohibited under
23 Delaware law and of course we're happy to provide a copy of
24 this subsection to the defense as well.

25 MR. BRAFMAN: But, Your Honor, what is in sharp

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1 dispute in this case is whether the board actually approved
2 these agreements and that is a credibility issue for the jury.
3 They don't need to take Mr. Richardson and Mr. Aselage at
4 their word because neither of them agreed that they had
5 acted -- both agreed that they saw the agenda which listed it,
6 both of them approved the filings with the SEC that listed
7 them, but they only deny having seen board minutes that they
8 should have seen or that they did see, we argue.

9 So we still have the argument that assume it's a
10 related-party transaction. You don't need Delaware law. If
11 it's a related-party transaction, they're defined as
12 related-party transactions in the filings.

13 The question is, a related-party transaction is not
14 illegal if approved by the board and, therefore, telling me
15 what the law is in Delaware if it's approved by the board, why
16 is Mr. Shkreli guilty of violating the law if the board of the
17 public company approved these items and our argument is that
18 they did approve them.

19 And that this business of coming in here and saying
20 I was on the board, but I wasn't paying attention or I was on
21 the board and I was too busy trying to pursue a relationship
22 with Mr. Shkreli is a question this jury has a right to
23 consider as to whether the board members are telling the truth
24 when they say they did not approve these transactions because
25 if they say they approved the transactions, they have

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1 substantial liability, certainly civil liability and they also
2 might be sitting next to Mr. Shkreli if they were to agree
3 that they defied their fiduciary obligations to Retrophin and
4 therefore they are guilty of the fraud in Retrophin. There's
5 an open question as to whether that testimony, A, is
6 believable and, B, do they have a motive to fabricate.

7 You can't take that away by telling the jury, by the
8 way, even if the board approved it, this could be a violation
9 of Delaware law. He's not charged in Delaware with violating
10 Delaware law. This is a conspiracy to commit wire fraud.
11 Once you put that instruction into the jury, they can convict
12 him of being in violation of Delaware law even if they
13 conclude he didn't defraud Retrophin.

14 MS. KASULIS: Your Honor, those are two separate
15 arguments. I think Mr. Brafman making a shift inn the
16 argument and he's welcome to tell the jury to challenge the
17 credibility of our witnesses and whether or not the approvals
18 were obtained. He just can't argue that they didn't need to
19 get the approval because that's contrary to the law.

20 I think what Mr. Brafman is arguing, he can make
21 those arguments in front of the jury. We're not precluding
22 that. They don't need to say that Mr. Shkreli didn't need to
23 get their approval. I think they're two distinct and separate
24 arguments.

25 In this latter argument, we're not contesting that

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1 he can make, it's the fact that he says they didn't need to
2 approve it at all, that's contrary to the law and that's what
3 we're raising to the Court to make sure we're not veering into
4 territory that we're making arguments that are not -- that
5 does not comport with the law that governs and applies to
6 Mr. Shkreli and Retrophin as a corporation.

7 THE COURT: I think that simply because a fact is in
8 dispute and because the jury has to ultimately find the facts
9 one way or the other it doesn't preclude the Court and, in
10 fact, the Court is still obligated to give instructions on the
11 law. So I don't think that those two are mutually
12 antagonistic to say to the jury this is your issue, was there
13 or was there not board approval, I still give an instruction
14 as to what the law requires.

15 MR. BRAFMAN: When we looked at this issue to
16 determine whether we should make a motion on this count, what
17 I recall from reading the Delaware case law is that first
18 there's an entire fairness determination that's being made and
19 then there's a determination as to whether or not there is a
20 duty to disclose.

21 It's not just a knee-jerk reaction that you have an
22 obligation to do this. If you want us to brief this issue, we
23 will but to suggest to the jury that Mr. Shkreli automatically
24 violated is Delaware law is just not true or accurate.

25 MS. KASULIS: We're not making the automatic

1 objection that you did. These are two distinct issues that
2 there's supposed to be approval and whether or not he got that
3 approval is a matter for the jury. Mr. Brafman cross-examined
4 witnesses and has the full evidentiary record. We're not
5 precluding him from making that argument. We agree that the
6 jury needs to be instructed on the law as to that.

7 MR. BRAFMAN: I don't agree that Delaware law
8 requires that we get approval. I just don't accept that.

9 THE COURT: We will look at the law and if the
10 parties want to brief this issue we will, of course, not
11 preclude anyone from doing so. We were hoping to post the
12 draft instructions sometime early next week. We have been
13 working on them, but we don't want to have to have this
14 process go on forever. We'd like to get dates by which we're
15 going to hear from the parties if they wish to be heard.

16 MR. BRAFMAN: Can I ask a hypothetical question just
17 for scheduling purposes, Your Honor?

18 THE COURT: Sure.

19 MR. BRAFMAN: Assume for purposes of this
20 discussion, and it sounds did the Government may be resting on
21 Monday or Tuesday depending on the length of the direct and
22 cross of the Government's case agent. I'm not aware of any of
23 the witnesses that they called from the other entities
24 appeared to me to be extensive either direct or
25 cross-examination so it would appear that the Government may

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1 rest on Monday or at the latest on Tuesday assuming they're
2 not calling Mr. Geller and my question is Your Honor, would we
3 try and do a Rule 29 argument charging conference and
4 summations next week so that we go to the jury as early as
5 Thursday or Friday?

6 THE COURT: If there were going to be defense
7 witnesses, yes.

8 MR. BRAFMAN: Okay.

9 THE COURT: I just don't -- I think I'm a little bit
10 in the dark about what else is coming.

11 MR. BRAFMAN: I understand.

12 THE COURT: In terms of witnesses, I would say that
13 I anticipated, my clerk and I have been talking about the
14 instructions and hoping we can get something posted early next
15 week with the idea that I might be charging the jury as early
16 as Wednesday or Thursday.

17 MR. BRAFMAN: To be candid one or two of the
18 potential defense witnesses that we are at least thinking
19 about will be determined by what we believe Your Honor is
20 going to actually be charging with respect to the intent
21 portion of Your Honor's charge.

22 I can anticipate 98 percent of the Court's charge,
23 but to the extent that the Court may or may not charge in the
24 specific way, it may require us to call one or two defense
25 witnesses. That's all I want to say about that. If Your

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1 Honor is going to be posting or think you will be posting
2 early next week, that may make it easier for us.

3 THE COURT: This is the thing, I try to find the
4 right balance between posting the charges and making sure that
5 we have a clear vision of what the evidence is going to look
6 like because the worst thing is to have to put in charges and
7 then take them out. So that's why it's a little bit of a
8 balance to make sure that the case is far enough along so that
9 the charges as we try to post them in sufficient time to hear
10 feedback, reflect the trial record. It's not going to be a
11 situation where I would want to have to redo the charges
12 because additional evidence might come in.

13 MR. BRAFMAN: I understand. Once they tell us what
14 the decision on Mr. Geller is and once we come to an
15 understanding with respect to what the application, if any, of
16 Delaware law is, I think we'll be able to tell them this
17 weekend, the latest by Sunday, whether there is or isn't a
18 defense case.

19 MS. SMITH: If there is any way that we can get some
20 preview of the defendant's case by today. I just don't really
21 see why they're not able to give us that courtesy.

22 MR. BRAFMAN: We'll give you that by 6:00 today if
23 we get a decision about Geller.

24 THE COURT: Okay. Mr. Agnifilo, did you give me a
25 list of exhibits --

1 MR. AGNIFIL0: I had until noon. I thought the
2 witness was going to be on direct for three or four hours.
3 That's what we had been told. I would need an hour after I
4 leave the courtroom to go back to my office to put the written
5 list together into a chart and send it to Your Honor and send
6 it to the Government.

7 Your Honor is going to get a chart and the
8 Government is going to get a chart. It's going to have an
9 exhibit number and a basis for whatever objection I may have
10 and to the extent that case law would be helpful it's going to
11 have case law. I'm going to need a half hour sitting at my
12 desk to do it.

13 THE COURT: Do you anticipate a lot of exhibits?

14 MR. AGNIFIL0: It's a few. I mean --

15 THE COURT: Meaning 20?

16 MR. AGNIFIL0: About.

17 THE COURT: We can handle 20.

18 MR. AGNIFIL0: It might be 30. I haven't actually
19 added them all up.

20 THE COURT: As long as we're not talking 100.

21 MS. SMITH: And as we said, we're going to be adding
22 at least 20 exhibits to the case agent today and we'll give
23 them to the defense.

24 Also, we said that we would provide briefing on the
25 settlement agreements, so we can do that today and there was

1 some discussion yesterday about the standard for
2 co-conspirators.

3 It's in the jury instructions, but we're happy to
4 provide some additional information about co-conspirators if
5 that would be helpful to the Court in terms each of the
6 different counts, what the standard is and where we think
7 between the evidence that's already in and the evidence coming
8 in through the remaining witnesses.

9 MR. BRAFMAN: It would be helpful to us to shape or
10 reshape what may be a Rule 29 argument, if we're doing it for
11 Your Honor I think it's a good idea.

12 MS. SMITH: So since that is kind of in Rule 29
13 we'll do it over the weekend, but to the extent that
14 Mr. Agnifilo's is objecting to co-conspirators statements, I
15 think that would be helpful.

16 THE COURT: I issued an order this morning based on
17 yesterday's conference which you may have seen, but I did ask
18 exactly what Mr. Agnifilo has promised. He will give us
19 exhibits numbers and the basis for his objection and the
20 government will respond and if it is based on a
21 co-conspirator's statement you will explain or just point me
22 to evidence in the record, either currently or that you
23 anticipate from the case agent once you establish the person's
24 status as co-conspirator.

25 MS. SMITH: So maybe we can include it in with what

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1 the defense objections are.

2 MR. AGNIFIL0: Just so the Government can think
3 about it in the meantime, I would say probably 60 or 70
4 percent of the objections would hinge on whether Evan Greebel
5 is a co-conspirator at different points in time and on certain
6 subjects. There's also issues as to whether Ron Tilles is a
7 co-conspirator. The issue of whether Greebel is or is not a
8 co-conspirator is probably the heart of the objections across
9 the board.

10 THE COURT: What about Mulleady?

11 MR. AGNIFIL0: Mulleady doesn't come up as much.
12 Mulleady comes up less frequently. I don't know that there's
13 been evidence of Mulleady being a co-conspirator on this. Off
14 the top of my head, I don't remember if I objected to any of
15 the lists about the proffered e-mail.

16 MR. BRAFMAN: It will be an issue that the court
17 will have to resolve in connection with Mulleady. Some
18 evidence came in through a witness subject to connection the
19 Government will be able to establish when Mulleady was a
20 co-conspirator.

21 MS. SMITH: Given the objections, some of the
22 additional documents we've marked for authentication,
23 clearly show, for example, that the funds did not have money
24 and at certain points in time and that his continued
25 relationship with the defendants including, for example,

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1 sending out marketing materials on behalf of MSMB that said
2 there were no side pockets or no lockups or no illiquid stocks
3 after MSMB had invested in Retrophin and sent out statements
4 to investors already in the fund, that a portion of their
5 assets were illiquid. So there are a bunch of different we
6 will round that out through the case agent and we will provide
7 those additional documents.

8 There was also some concern yesterday about Michael
9 Lavelle and with him being totally fine with his interests
10 being rolled from MSMB Healthcare into Retrophin. There are a
11 number of additional documents that we can mark to those ends.

12 In terms of Ron Tilles, we'll brief this, but the --
13 you know, the one e-mail that I can think of that was marked
14 related to Ron Tilles, we do believe he's a co-conspirator in
15 Count 8. The e-mail was marked in connection with Ron Tilles,
16 has really focused on the defendant's representation to Tilles
17 to pass on to investors.

18 We'll argue that, but I don't think it has anything
19 to do with the co-conspirator. It's a statement of the
20 defendant. The truth of the matter is most of these
21 statements of the defendants are separate and apart from any
22 other issue related to admissibility, and so to the extent
23 they want to make certain arguments, that's fine, but most of
24 these issues are clearly statements of the defendants.

25 (Continued on next page.)

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1 THE COURT: I think you also made the point
2 yesterday, some of these statements, were statements his
3 employees or agents made.

4 MS. SMITH: That's right.

5 So, for example Mr. Tilles worked for Mr. Shkreli,
6 you know starting in 2012. I think maybe even earlier,
7 recruiting investors. So some of statements to Mr. Shkreli
8 were in his capacity for example, you know, all the people I
9 helped recruit to MSMB Healthcare want to know what is going
10 on with their investments. Mr. Shkreli provides false
11 information he wants to pass on to investors, in his capacity
12 as an agent.

13 So I agree. I think there are a number of
14 exceptions that will apply, separate and apart from the
15 coconspirator question. But we are happy to kind of address
16 all those.

17 THE COURT: All right.

18 So let's set some dates or deadlines for this. I
19 would like to know what my weekend will look like.

20 So, I will get Mr. Agnifilo's objections to exhibits
21 by about 1:30 today.

22 MR. AGNIFIL0: That should be fine.

23 THE COURT: The Government, what time can you respond?

24 MS. SMITH: Just depends on how lengthy it is. I
25 think if we can have till tomorrow morning, that would be

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1 helpful. If we can file it earlier, we absolutely will.

2 THE COURT: Tomorrow morning at 9.

3 MS. SMITH: Sure.

4 THE COURT: And then there was going to be some
5 issues-- any other briefing that the defense wanted to do on
6 Delaware law?

7 MR. BRAFMAN: Can we discuss this among ourselves
8 and let the Court know.

9 THE COURT: I will give you deadlines just in case
10 you decide to go there.

11 So, if the defense wants briefing on Delaware law, I
12 would like to see the submission by 4 o'clock today.

13 MR. AGNIFILo: I think that will be tough to do
14 Judge. Just because I'm now going to have to get Your Honor
15 the other thing at 1:30. Two and a half hours.

16 THE COURT: You have all these wonderfully
17 intelligent capable legal colleagues. All members of the
18 Eastern District.

19 MR. AGNIFILo: All of them.

20 MS. SMITH: We also, it sounds like maybe we should
21 have the witness ready on Monday morning from Delaware just
22 because it sounds like it won't be resolved today. I want to
23 check.

24 MR. AGNIFILo: That might be the best thing.

25 THE COURT: You all just can't sit down for

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1 ten minutes and talk this out and get it resolved among
2 yourselves?

3 MR. AGNIFILo: We can try.

4 Actually maybe we can do that.

5 THE COURT: I will disappear and you can speak about
6 it and hopefully get it resolved. If you do want to brief it,
7 I will say 5 o'clock, 6 o'clock.

8 MR. AGNIFILo: 6 o'clock.

9 THE COURT: Then I will hear from the Government by
10 noon tomorrow, all right?

11 MS. SMITH: Yes.

12 THE COURT: I will say 1 o'clock.

13 MS. KASULIS: Thank you, Judge.

14 THE COURT: That is on Delaware law.

15 What else, anything else you all want to file?

16 MS. SMITH: Your Honor, we were just going to file
17 something on the settlement agreements by tonight.

18 THE COURT: Settlement agreements and then the
19 defense will respond tomorrow.

20 Can you do it by twelve or one tomorrow?

21 MR. AGNIFILo: Sure.

22 THE COURT: Then the Government will advise the
23 defense about Mr. Geller by five today, and the defense will
24 provide their witness list, anticipated witness list by six.

25 MR. AGNIFILo: Yes.

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1 Can we also know what other witnesses might be
2 coming on Monday if the Government knows.

3 MS. SMITH: We obviously have VRC, NAV, potentially
4 the Delaware person and we still have Marcum as a possibility,
5 and we have our case agent.

6 We also provided them with two summary charts which
7 they have said they were going to object to. I don't know if
8 that is part of Mr. Agnifilo's objections or not.

9 THE COURT: This is those case agent summary charts?

10 MS. SMITH: Yes. We will refer to them in the brief
11 I think on Wednesday.

12 MR. AGNIFIL0: The nature of the objection is, their
13 metric is the amount of money I believe in one of the bank
14 accounts. We don't think that-- first of all, what the
15 statements actually say "X" that Mr. Shkreli sends out. Is
16 the value of your investment is "X". And what the charts
17 don't show, is the value of Retrophin at different points in
18 time. So we think the charts are inherently misleading
19 because the chart doesn't reflect what Mr. Shkreli's investor
20 performance statement actually said.

21 Mr. Shkreli's investment performance statement
22 didn't say the amount of money in the fund is "X". It said
23 the value of your investment is "X". Including illiquid
24 security which he was entitled to put into the investment
25 through the PPM. We think the charts are deceptive for that

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1 reason.

2 MS. SMITH: Just so it is clear. The charts
3 basically compare the money in the bank brokerage accounts for
4 MSMB Capital to the value that the defendant was saying was of
5 the investor's value in the fund. As in the performance
6 statements. So it is purely a summary chart of the
7 information. The bank and brokerage records have been
8 summarized by Ms. Spaulding, those numbers, and then the case
9 agent has gone through every single investor statement sent to
10 MSMB Capital and MSMB Healthcare investors and compared those
11 two.

12 The arguments that Mr. Agnifilo is making are
13 certainly arguments he can bring up on cross examination. I
14 will point out for example for Capital there was no investment
15 into Retrophin. It seems really like an argument directed
16 primarily at MSMB Healthcare. Again it is purely a summary
17 chart.

18 The chart standard is voluminous information that is
19 being summarized. Obviously all of those arguments can be
20 made on cross examination for why the chart is-- and the
21 defense's view misleading. It doesn't mean it is not an
22 accurate representation of what is actually in the underlining
23 exhibits.

24 THE COURT: I would agree. I think this is more an
25 issue that goes to areas of cross examination.

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1 MR. AGNIFIL0: Very well.

2 THE COURT: You know, arguments about why valuation
3 does not necessarily rest primarily on amount in the bank
4 account.

5 MR. AGNIFIL0: Yes, Judge. That is fine.

6 THE COURT: Okay.

7 MR. AGNIFIL0: One other request.

8 THE COURT: Yes.

9 MR. AGNIFIL0: I would ask if the Government could
10 be definite by 5 o'clock today as to the Marcum witnesses
11 rather than to say that they will see whether they call them
12 or not. I think we are in the last probably two days of the
13 Government's case. I am hoping to know by the end of the day,
14 exactly what the next two days and next week will look like
15 without it being quite as speculative as it is now.

16 MS. SMITH: It turns on the Delaware law issue.
17 That is why-- we are still trying to streamline. We may not
18 call them. Marcum has some additional information about
19 officers and directors' duties and if we need to put that in
20 through a lay witness based on their observations of Retrophin
21 for example rather than through the legal instruction we need
22 to leave that option open.

23 THE COURT: All right.

24 Let's have you resolve the Delaware law issue and if
25 you can't, we have a briefing schedule which will be completed

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1 by one o'clock tomorrow.

2 MR. AGNIFIL0: Yes.

3 THE COURT: Okay. Thank you.

4 All right.

5 (Matter adjourned.)

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